



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 836	Assembly Substitute Amendment 1
<i>Memo published: March 3, 2004</i> <i>Contact: Joyce L. Kiel, Senior Staff Attorney (266-3137)</i>	

2003 Assembly Bill 836 relates to the Milwaukee Parental Choice Program (MPCP).

Under *current law*, schools participating in the MPCP (MPCP schools) are not required to conduct criminal background checks of their employees and are not prohibited from employing individuals who have criminal convictions. MPCP schools are subject to the Fair Employment Act which, in pertinent part and subject to certain exceptions, prohibits discrimination in employment or licensing based on arrest or conviction record unless the circumstances of the charge or conviction substantially relate to the circumstances of the particular job or licensed activity.

Assembly Substitute Amendment 1 to 2003 Assembly Bill 836 provides as follows:

1. **Background Check Requirement.** The substitute amendment requires each MPCP school to conduct a criminal background check (background check) of each person employed by the MPCP school when the person is initially employed and at least every five years thereafter.

In connection with this change, the substitute amendment provides a 120-day period after the effective date of the act for an MPCP school to conduct a background check using the process described in item 2., below, for each person employed by the school, unless the school has already conducted a background check on the person within the five years immediately preceding the effective date of the act.

If a school later begins participation in the MPCP, the school must, within 120 days after participation begins, conduct a background check for each person employed by the school when MPCP participation begins, unless the school has already conducted a background check on that person within the immediately preceding five years.

2. ***Process for Background Check.*** The substitute amendment requires that the background check be conducted through the Department of Justice (DOJ). (A DOJ check provides information about convictions in Wisconsin under state law.)

When the person is initially employed, an MPCP school must require the person to be fingerprinted on two fingerprint cards and must submit the cards to DOJ. DOJ may submit the fingerprint cards to the Federal Bureau of Investigation for a national criminal history background check and to verify the person's identity.

3. ***Disqualifying Crimes.*** For six years following conviction (unless the conviction has been reversed, set aside, or vacated), an MPCP school may not employ an individual who has been convicted of any of the following: (a) a Class A, B, C, D, E, F, G, or H felony under ch. 940 (crimes against life and bodily security) or ch. 948 (crimes against children), Stats., except s. 940.08 (homicide by negligent handling of dangerous weapon, explosives, or fire) or s. 940.205 (battery or threat to Department of Revenue employee); (b) a Class BC felony under ch. 940 or 948, 1999 Stats. (second-degree sexual assault, incest with a child, child enticement, and soliciting a child for prostitution); or (c) an equivalent crime in another state or U.S. jurisdiction.

After six years, an MPCP school may employ a person with such a conviction record only if the person establishes by clear and convincing evidence that he or she is entitled to be employed.

4. ***Applicability of Fair Employment Act (subch. II, ch. 111, Stats.).*** If employment is prohibited under item 3., above, an MPCP school may not employ the person during the time periods specified ***notwithstanding*** the Fair Employment Act, that is, without considering if the circumstances of the conviction substantially relate to the person's job at the school.

If a person has been convicted of any felony (unless the conviction has been reversed, set aside, or vacated), an MPCP school ***may*** refuse to employ or ***may*** terminate the employment of the person ***notwithstanding*** the Fair Employment Act, that is, without considering if the circumstances of the conviction substantially relate to the person's job at the school.

5. ***Evidence of Completion of Background Check.*** The substitute amendment requires that:
 - a. Annually by September 1 following a school year of participation in the MPCP, an MPCP school must submit to the Department of Public Instruction (DPI) certification by the auditor who conducted the independent financial audit of the school that criminal background checks for all school employees were conducted using the required process and at the required frequencies as indicated in items 1. and 2., above. (This provision first applies to certifications due September 1, 2005.)
 - b. Annually by February 1, an MPCP school must submit to DPI a notarized statement by a person legally authorized to act on behalf of the school that the school will conduct the required criminal background checks. (However, the first such notarized statements are due within 60 days of the effective date of the act.)

When a school first participates in the MPCP, the school must submit to DPI by the August 1 before participation (or by May 1 if MPCP participation will begin during summer school) a notarized statement by a person legally authorized to act on behalf of the school that, for each person who will be employed when MPCP participation begins, a background check will be conducted within 120 days after MPCP participation begins using the process described in items 1. and 2., above, or was conducted within the immediately preceding five years.

6. ***Consequences for Noncompliance.*** The substitute amendment provides as follows:

- a. The State Superintendent ***may*** order immediate termination in the MPCP if the Superintendent determines that an MPCP school has done any of the following: (1) misrepresented information required in the notarized statements about background checks as described in item 5. b., above; or (2) failed to provide the notarized statements or auditor's certification about background checks by the deadlines specified in item 5. a. and b., above.

If termination is ordered, the Superintendent must immediately notify the parent or guardian of each pupil attending the school.

- b. The State Superintendent ***may*** withhold payment from a parent or guardian of a pupil attending an MPCP school if the school violates any provision of the MPCP statute (s. 119.23, Stats.).

7. ***Initial Applicability.*** Except as noted in items 1. and 5. a. and b., above, the substitute amendment provides that the act first applies to schools that participate in the MPCP in the 2004-05 school year.

Legislative History

2003 Assembly Bill 836 was recommended for passage by the Assembly Committee on Education Reform on a vote of Ayes, 12; Noes, 0. Assembly Substitute Amendment 1 to the bill was offered by Representative Jensen and was adopted by the Assembly on a voice vote.

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